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SENSITIVE  
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TAGS: [PGOV](#) [KJUS](#) [PHUM](#) [CB](#)  
SUBJECT: PUBLISHER HONG CHAKRA'S APPEAL FAILS; JAILED UNTIL  
JUNE 2010

REF: PHNOM PENH 489

SENSITIVE BUT UNCLASSIFIED. NOT FOR INTERNET DISSEMINATION.

¶1. (SBU) SUMMARY: After an hour-long hearing, the Appeals Court reaffirmed the June 26 conviction for disinformation of Khmer Machas Srok publisher Hong Chakra, and ordered him to continue serving a 12-month jail sentence. While presiding judge Seng Sivutha asked fair questions, the accused's attempt to express "regret" for a mistake was seized as an admission of guilt by at least one of the three sitting judges. The defendant's lawyer could only read from a prepared statement that was part political rhetoric, part polemic, part denial of any wrongdoing - thus undercutting his client's attempt to show remorse for a mistake. Government lawyer Soun Chanthan made clear by his forceful presentation for application of the criminal law against the accused that some government leaders want Hong Chakra to stay in jail for two articles that the government claimed dishonored officials and caused social disorder. END SUMMARY.

Hong Chakra Pleads: A Mistake or Guilty?  
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¶2. (SBU) Hong Chakra first spoke on his own behalf, stating that he regretted having authored the stories on Deputy Prime Minister Sok An's political situation. One story published in the April 5-7 edition of Khmer Machas Srok stated that Sok An wanted to be Prime Minister, replacing Hun Sen. Another story published on May 2 said that Hun Sen was breaking up Sok An's nest of allies. Noting that his stories relied on other sources, Hong Chakra said that he was mistaken in printing stories that in retrospect might not have been backed up by evidence, but he denied knowing beforehand that the accounts were false. When attempting to say that he had "made a mistake" at least one judge pounced on the phrase, which in Khmer legal terminology also means "am guilty." Hong Chakra was not able to explain his way out of this dilemma.

¶3. (SBU) Defense lawyer Choung Chou Ngy gave the three-judge panel a five-page, single-spaced brief and then proceeded to read from it verbatim. (COMMENT: The text appeared to have been carefully prepared by Sam Rainsy Party supporters, who are paying this lawyer who represents Rainsy in his defamation suit with Hor Namhong, and who help support Hong Chakra's family. END COMMENT.) While the brief argued against use of the UNTAC criminal law and for the use of the civil-based Press Law, it also included long sections repeating the statements raised in the original article and unremittingly arguing that these statements were not false. The presiding judge interrupted this line of argumentation to say that the court would hear points of law, but not about politics.

Government Lawyer Unrelenting  
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¶4. (SBU) Government lawyer Soun Chanthan was equally adamant in insisting on the application of the UNTAC law on disinformation, saying that it was clear the Khmer Machas Srok articles were false (but presenting no evidence). Several times during his presentation, he thumped his pointed finger on the wooden table to express his dismay with the crime and the social disorder it had caused (although no evidence was presented). When asked if the non-criminal press law should apply, Soun Chanthan insisted that the criminal code should be used and the lower court's sentence upheld. Prosecutor Tep Khemara argued that the case made in the lower court was proper and the sentence appropriate.

¶5. (SBU) Following the statements by defense and the government, the judgment could not have been more succinct, read aloud to a packed court at the end of a long morning of appeals cases: the appeal was properly made, the municipal court ruled properly in applying article 62 of the UNTAC law on disinformation, the accused will remain in jail, and the accused has the right to appeal to the Supreme Court. Observers included the UN Office of the High Commissioner for Human Rights, LICADHO, Cambodian Center for Human Rights, and other court monitors, as well as SRP politicians Yim Sovann, Eng Chay Eang, Son Chhay and a host of others.

¶6. (SBU) In a conversation before the verdict, Khmer Machas Srok editor Chum Sophal -- reportedly a close advisor to Hong Chakra -- revealed the intent of Hong Chakra to continue with his 12-month sentence. He noted that an appeal would be lodged with the Supreme Court.

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COMMENT: Politics as Usual  
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¶7. (SBU) Hong Chakra looked relatively fit and healthy, after having just recovered from a cough according to his daughter. The courtroom battle echoed the personal political antagonisms between DPM Sok An and opposition party leaders. Neither side cares to respect ground rules for political comity and the opposition lawyer -- if not Hong Chakra himself -- signaled a willingness of the opposition to use the tools available to it to antagonize and vilify the government. Similarly, the government lawyer showed no desire to entertain a more lenient approach to Hong Chakra's imprisonment in Prey Sor prison, where he is locked in a small cell with 49 other inmates. As a result, the judges had nothing to add to the Municipal Court decision, which appears to reflect the government's sentiment: Hong Chakra will stay in jail for 12 months and must pay a fine of 9 million riel (USD \$2250).  
RODLEY